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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Application of AT&T Corp. and)
Teleport Communications Group Inc.) CC Docket No. 98-24
for Transfer of Control)

To: The Commission

OPPOSITION TO MOTION TO DISMISS

AT&T Corp. ("AT&T") and Teleport Communications Group Inc. ("TCG") ("Applicants") hereby oppose the Motion to Dismiss ("Motion") filed by BellSouth Corporation ("BellSouth") on March 18, 1998 against the above-captioned application.¹

Several years ago, BellSouth unsuccessfully attacked AT&T's acquisition of McCaw Cellular Communications, Inc., which the Commission properly approved. BellSouth then unsuccessfully appealed. The D.C. Circuit, in affirming the Commission, found that BellSouth had simply launched a "diffuse attack" on a

1. See Public Notice DA 98-369 (rel. Feb. 25, 1998); Public Notice DA No. 98-558 (rel. March 24, 1998).

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merger that would strengthen competition against its local monopoly.² The Court rejected BellSouth's view that "the BOCs' welfare should have been paramount in the Commission's analysis" of the McCaw transaction.³ Indeed, the D.C. Circuit observed that "t]he conditions proposed by BellSouth, like BellSouth's arguments generally, seem to be rooted in the mistaken belief that the Commission should protect competitors at the expense of consumers."⁴ The Court went on to note that "BellSouth would have the Commission serve [its] own narrow interest rather than the broader public interest."⁵

BellSouth's current Motion suffers from the same flaws. The Motion ostensibly bases its opposition on a claim that the Application does not contain sufficient detail about the public interest benefits of the merger. Its true motive for this filing, however, is the same as the motive that lay behind its opposition to the McCaw transaction: the protection of its market position. In fact, BellSouth apparently made up its mind to oppose this Application before it was filed, and its false claims about an "inadequate public interest showing" are but a thin *post hoc* rationalization of its preconceived opposition.

The day after the AT&T-TCG transaction was announced, BellSouth released a statement which said that it would "file in opposition to AT&T's proposed

2. See SBC Communications and BellSouth Corporation v. FCC, 56 F.3d 1484, 1490 (D.C. Cir. 1995).

3. *Id.* at 1491.

4. *Id.*

5. *Id.*

acquisition of Teleport” because BellSouth had not been allowed into the long distance business. BellSouth further stated that grant of the AT&T-TCG application should be “conditioned on Bell company entry into the long distance market.”⁶ Notably, BellSouth declined to state its true motives for its opposition in the text of the Motion itself.

The BellSouth Motion is, of course, totally without merit, and was introduced solely to delay and complicate what should be a routine and prompt approval of a pro-competitive merger. There is absolutely no reason for the Commission to delay by even a single day the approval of this merger other than BellSouth’s desire that the “Commission serve [BellSouth’s] own narrow interest rather than the broader public interest.”

To start, BellSouth’s suggestion that the transaction should be scrutinized with special care because, BellSouth asserts, interexchange carriers have failed to pass through access charge reductions is baseless and irrelevant. First, AT&T has recently demonstrated that assertion is false: AT&T’s long distance prices are dropping faster than access charges, so not only have the modest reductions in access charges been flowed through, but consumers are also enjoying additional price reductions as a result of competition.⁷ Second, and more fundamentally, even if BellSouth’s assertion were valid, it would obviously have no bearing on

6. See BellSouth Press Release, January 8, 1998.

7. See CCB/CPD 98-13, Letter from Mark C. Rosenblum to William E. Kennard (March 5, 1998).

whether this transaction -- which is for the purpose and will have the effect of enhancing competition in the local exchange and exchange access markets -- is in the public interest.

Contrary to BellSouth's Motion, the AT&T-TCG Application amply demonstrates that the merger is in the public interest.⁸ For example, Applicants explained that the 38 GHz operations of TCG's subsidiary, BizTel, Inc., "will enable AT&T to provide its customers an alternative means of accessing its telecommunications services. The 38 GHz operations of BizTel will provide a cost-effective means of extending the reach of AT&T's services to customer locations over its own network."⁹

The Applicants noted that "AT&T's ability to provide robust competitive local exchange services will be significantly enhanced if AT&T has alternative local infrastructure available to it and within its control and management."¹⁰ The Applicants observed that "AT&T's acquisition of TCG holds great promise for the

8. The public interest discussion in the AT&T-TCG FCC application is essentially the same as the public interest statements provided to state public utility commissions, and which have already been relied upon by eleven state commissions in deciding to approve the merger. None of these state public commissions, in approving the transaction, has suggested that the public interest disclosures by AT&T and TCG were insufficient.

9. BizTel, Inc. Transfer of Control Application, File No. 9510353, Ex. 5, at 1-2. Nor is there any basis to BellSouth's claim that the Commission needs detailed information (which would, in all events, be readily available from the Commission's own records) on potential overlaps between AT&T's 38 GHz licenses and TCG's BizTel licenses. The Commission has routinely permitted numerous 38 GHz licensees -- Winstar being a prominent example -- to hold two, three or even more licenses in a single geographic area.

10. *Id.* at 2.

development of facilities-based local competition by taking full advantage of the complementary aspects of AT&T's long distance and wireless networks and marketing expertise and TCG's local fiber optic and broadband wireless capabilities and rights-of-way."¹¹ The Applicants stated that "AT&T also expects that the acquisition of TCG will enhance AT&T's ability to provide end-to-end service to broader classes of customers by enabling AT&T to tap the experience and expertise of TCG's management team to lead AT&T's overall local entry strategy for business and residence customers."¹²

Notwithstanding the Applicants' persuasive public interest showing, BellSouth argues that the Applicants should have filed the type of information the Commission considered in the context of an entirely different Bell Atlantic/NYNEX merger application.¹³ That application, however, involved a transaction between major ILECs with monopoly control of vast, adjacent local exchange markets that raised serious questions regarding the impact of the proposed merger on competition in the local exchange and other markets. With respect to that merger, there was no conceivable pro-competitive purpose or effect; and the more detailed information was needed to ascertain whether the mergers would harm competition.

11. *Id.* at 3.

12. *Id.*

13. BellSouth Motion at 2-4 (citing NYNEX Corporation and Bell Atlantic Corporation for Consent to Transfer Control of NYNEX Corporation and its Subsidiaries, 12 FCC Rcd 19985 (1997)).

By contrast, the instant applications involve two non-dominant carriers who seek to improve their ability to break open local monopolies and increase competition.

Consequently, the foreclosure of potential competition and other anticompetitive issues that were at the heart of the Bell Atlantic/NYNEX transfer of control application obviously are not raised by this application. For that reason, it was unnecessary for the Applicants to provide the kind of information filed by the latter incumbent local exchange carriers.

Equally without merit is BellSouth's claim that the instant application should be dismissed because it does not adequately discuss TCG's acquisition of ACC Corp. and US WATS, Inc. or TCG's provision of Internet service.¹⁴ In fact, the Applicants filed all the information relevant to the transfer of control of the authorizations held by TCG and its affiliates and their application is complete in every respect.¹⁵

Similarly wrong is BellSouth's assertion that the Commission would be creating a "double standard" in accepting the Applicants' public interest showing when different public interest showings have been made in other transfer of control applications.¹⁶ Contrary to BellSouth's assertion, each transfer of control application must be considered on its own merits and the public interest showing

14. *Id.* at 5-6. BellSouth's point about US WATS, Inc. is, in any event, moot. ACC and US WATS, Inc. recently announced that they had terminated their merger plans.

15. TCG CERFNET, the Internet Service Provider owned by TCG, does not hold any Commission authorizations.

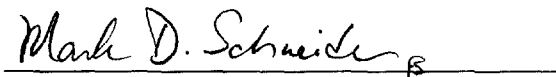
16. *Id.* at 7.

necessary to support the grant of one application cannot be a precedent for the showing required to support the grant of another application involving entirely different circumstances. Furthermore, it is ludicrous for BellSouth to suggest that the public interest showing required to support the grant of the instant application should be modeled on the public interest showing necessary in a Section 271 application, for which different and discrete statutory requirements are specified in the Communications Act.

In conclusion, the Applicants have requested the Commission's consent to the transfer of control of the point-to-point microwave radio authorizations and international Section 214 authorizations held by TCG and its affiliates to AT&T. Applicants have demonstrated conclusively that the public interest would be served by the prompt grant of their application. For the reasons stated above, the Commission should deny BellSouth's Motion.

Respectfully submitted,

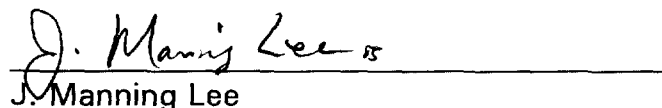
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Dated: April 1, 1998

CERTIFICATE OF SERVICE

I, Charlene A. Reed, do hereby certify that on this 1st day of April, 1998, I have caused a copy of the foregoing OPPOSITION TO MOTION TO DISMISS to be served, via first-class United States Mail, postage prepaid, upon the persons listed below:

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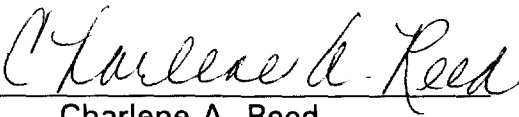
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